

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 875 OF 1999

HYUNDAI PLANT & EQUIPMENT (PTY) LTD. PLAINTIFF

VERSUS

SURYAKANT CHAUHAN DEFENDANT

RULING

The applicant who is the judgment debtor/defendant in this suit has lodged an application for the following substantive orders:-

(a) That the warrant of attachment and sale dated 16.5.2001 be set aside; and

(b) That the defendant's lorry registration No. KAH 453K and ZB 6832 be released by Afro Invest (K) Limited forthwith with no orders as to costs.

The application which is supported by an affidavit sworn on 17.6.2001 by the applicant Mr. Suryakant Chauhan is based on the following grounds:-

“i. That the attachment notification of sale and pur ported sale of the defendant's vehicle has been done irregularly and contrary to the Auctioneers Act and the Rules made thereunder;

ii. That the plaintiff in this application for execution has not given the defendant credit for sums already paid; and

iii. That the attachment is fatally defective.”

The applicant's basic complaints as they emerged from the submissions of his learned Counsel Mr. Namisi are that the Auctioneers Rules were violated by the auctioneer's alleged failure to proclaim the attached lorry before attachment; that the period of advertisement required to be given by the Auctioneers Rules before a sale can take place was not so given and that the applicant was not allowed credit for the sums paid.

However as shown in the replying affidavit sworn on 29.6.2001 by Mr. Gerhard Ungerer, the manager of the plaintiff's affairs in Kenya, all the three complaints summarised above are totally devoid of substance and merit. I say so because annexed to Mr. Gerhard Ungerer's affidavit is a proclamation confirming that the applicant's motor vehicle KAH 453K was proclaimed as required. And as to the alleged sale without giving sufficient time as required by the Auctioneers Rules and also the alleged failure to give the applicant credit for the payments he has made, my view of the matter is that those are minor and immaterial errors which cannot vitiate the attachment. In any case considering that the attached motor vehicle has yet to be sold, the question of the legality of the advertisement or indeed that of the alleged failure to give credit for payments cannot in my view arise.

For the above reasons, I am of the view that the application lacks substance and must fail. It is dismissed with costs.

Dated at Nairobi this 3rd day of August, 2001

T. MBALUTO

JUDGE